

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK MONACO BAZZO,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.

Defendants.

No. 1:23-cv-01454-KES-SAB (PC)

ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS

(Docs. 2, 9, 11, 17)

Plaintiff is proceeding pro se in this action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

Plaintiff initiated this action on September 13, 2023, together with his motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Docs. 1, 2. Plaintiff filed a certified copy of his prison trust account statement on September 15, 2023. Doc. 3. On October 12, 2023, the assigned magistrate judge ordered plaintiff to submit another application to proceed in forma pauperis, Doc. 7, and plaintiff filed a further motion to proceed in forma pauperis on 10/24/2023, Doc. 9.

On October 25, 2023, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's motion to proceed in forma pauperis be denied and that plaintiff be directed to pay the \$402.00 filing fee for this action. Doc. 11. The magistrate judge found that

1 plaintiff was able to afford the costs of this action because his available balance at the time this
2 action was filed was \$628.97. *Id.* Those findings and recommendations were served on plaintiff
3 and contained notice that any objections thereto were to be filed within fourteen days. *Id.* at 3.
4 On November 3, 2023, plaintiff filed objections to the findings and recommendations. Doc. 12.

5 On October 24, 2024, plaintiff filed a third motion to proceed in forma pauperis. Doc. 17.
6 A subsequent prisoner trust fund account statement plaintiff filed on November 4, 2024, reflects
7 that plaintiff had no funds in his account as of that date and no longer has the funds to pay the
8 filing fee. Doc. 19.

9 The Court acknowledges the changed circumstances were, at least partially, due to the
10 delay in ruling on plaintiff's motion to proceed in forma pauperis. Such delay was caused by a
11 judicial vacancy in the Fresno courthouse and included several months where this matter was not
12 assigned to a district judge. *See* Doc. 11.

13 Based on his most recent filings (Docs. 17, 19), plaintiff has made the showing required
14 by § 1915(a) and, accordingly, his request to proceed in forma pauperis will be granted.¹ Plaintiff
15 is obligated to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. § 1915(b)(1).
16 Plaintiff is obligated to make monthly payments in the amount of twenty percent (20%) of the
17 preceding month's income credited to Plaintiff's trust account. The California Department of
18 Corrections is required to send to the Clerk of the Court payments from Plaintiff's trust account
19 each time the amount in the account exceeds \$10.00, until the statutory filing fee is paid in full.
20 28 U.S.C. § 1915(b)(2).

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's application to proceed in forma pauperis is GRANTED.
- 23 **2. The Director of the California Department of Corrections or designee shall collect**
24 **payments from plaintiff's prison trust account in an amount equal to twenty percent**
25 **(20%) of the preceding month's income credited to the prisoner's trust account and**
26 **shall forward those payments to the Clerk of the Court each time the amount in the**

27 _____
28 ¹ The court considers plaintiff's current financial situation when determining whether to grant in
forma pauperis status because of the delay caused by the judicial vacancy.

1 **account exceeds \$10.00, in accordance with 28 U.S.C. § 1915(b)(2), until a total of**
2 **\$350.00 has been collected and forwarded to the Clerk of the Court. The payments**
3 **shall be clearly identified by the name and case number assigned to this action.**

- 4 3. The Clerk of the Court is directed to serve a copy of this order and a copy of plaintiff's in
5 forma pauperis application on the Director of the California Department of Corrections,
6 via the court's electronic case filing system (CM/ECF).
- 7 4. The Clerk of the Court is directed to serve a copy of this order on the Financial
8 Department, U.S. District Court, Eastern District of California.
- 9 5. The findings and recommendations issued on October 25, 2023, Doc. 11, are terminated
10 as moot.

11
12
13 IT IS SO ORDERED.

14 Dated: November 22, 2024

15
16
17
18
19
20
21
22
23
24
25
26
27
28


UNITED STATES DISTRICT JUDGE